

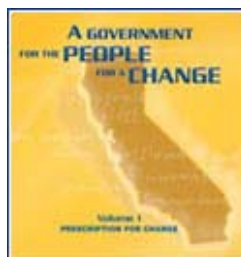


State of California
Department of Pesticide Regulation



excerpts from the
California Performance Review Report
entitled

"A Government for the People for a Change"



August 17, 2004



The Report of the California Performance Review - Government for the People for a Change - contains four volumes of comprehensive recommendations to reform and revitalize California's state government. 275 volunteers worked tirelessly for five months examining organizational structures, analyzing data, meeting with stakeholders and compiling the recommendations now presented to you, below:

This report contains excerpts from Volume II. "Form Follows Function" and Volume IV. "Issues and Recommendations" that contain recommendations for changes in the Department of Pesticide Regulations' regulatory programs. Volume I. "Prescription for Change" and Volume III. "Keeping the Books" address state administrative issues.



Prescription for Change

This first volume of the report summarizes CPR's recommendations and is a call to action to dramatically change state government by reorganizing its structure and streamlining operations to improve accountability and productivity.



Form Follows Function

California's government must reorganize to meet the demands of modern California. In this volume, CPR proposes a new framework that aligns programs by function, consolidates shared services and abolishes outdated entities.



Keeping the Books

CPR's team of auditors examined the state's budget process, financial controls and strategic planning efforts. This volume is their evaluation of the state's fiscal and performance management practices.



Issues and Recommendations

The fourth volume of the CPR report contains 279 government issues with over 1,200 recommendations that have the potential to save the state \$32 billion over the next five years and guide California's government into the 21st century.

"There are risks and costs to a program of action.
But they are far less than the long-range risks and costs of comfortable inaction."
-- President John F. Kennedy

Executive Summary

As part of the continuing effort to streamline and maximize efficiency in state government, Governor Schwarzenegger signed Executive Order # S-5-04 creating the first ever California Performance Review (CPR). First announced by the Governor during his State of the State address, the California Performance Review conducted a comprehensive examination of the methods and practices of government with the goal of increasing efficiency while reducing costs to create the first 21st century government in the United States. Upon conclusion of the review, the CPR submitted its recommendations to the Governor in a report entitled "Government for the People for a Change". The Governor has now directed the Commission to conduct public hearings throughout the state to gather testimony. This Commission is comprised of leaders from the business and labor communities, local government and public policy experts.

The CPR recommendations to the Governor are simply recommendations, and each requires a different implementation process. The California Performance Review will continue by working on implementing the recommendations of the report or developing new recommendations.

The California Performance Review report recommends the following changes to the administration and functions of the Department of Pesticide Regulation:

1. Transfer Support Functions of CalEPA Boards, Departments, and Offices to the Office of the Secretary. *(II. Form Follows Function: Chapter 6, The Department of Environmental Protection).*

All program support functions should be transferred to the Office of the Secretary, including administrative services (information technology, budgets and accounting, personnel and business services), legal counsel, public affairs, legislative affairs and regulatory and policy development from the boards, departments and offices of Cal-EPA.

2. Create the Division of Pesticide Regulation within the Department of Environmental Protection. *(II. Form Follows Function: Chapter 6, The Department of Environmental Protection).*

Division of Pesticide Regulation

- a. Management Goal:** The Division's primary goal should be to regulate the use of pesticides in agriculture to keep food safe, promote worker safety and protect the environment. The Division of Pesticide Regulation should also strive to minimize the burden of regulation on the affected industries, consistent with public safety.

- b. Purpose and Functions:** The Division of Pesticide Regulation should regulate the registration, sale and use of pesticides for indoor and outdoor use.
- c. Transferred Functions:** All functions and staff from the Department of Pesticide Regulation and the Structural Pest Control Board within the Department of Consumer Affairs should be transferred to the Division of Pesticide Regulation.

3. Eliminate the Structural pest Control Board and transfer its licensing functions and oversight responsibilities to the Department of Pesticide Regulation. *(II. Form Follows Function: Appendices. Evaluating California's Boards and Commissions; and IV. Issues and Recommendations: Chapter 5. Resources Conservation and Environmental Protection: Resolution 5 Consolidate Pest Control Licensing and Regulatory Programs)*

4. Pesticide Product Registration: Letter of Authorization – repeal FAC Section 12811.5 *(IV. Issues and Recommendations: Chapter 5. Resources Conservation and Environmental Protection: Resolution 16: Streamline the Department of Pesticide Regulations Registration Process).*

5. Pesticide Product Registration – Efficacy Data Reviews – amend state regulations to be consistent with USEPA requirements. *(IV. Issues and Recommendations: Chapter 5. Resources Conservation and Environmental Protection: Resolution 16: Streamline the Department of Pesticide Regulations Registration Process).*

6. CalEPA Environmental Enforcement/Compliance/Results programs

- **Risk-based, multi-media inspection protocol/**
- **Multimedia environmental compliance assurance program/**
- **Enforcement Protocol/**
- **Appeals Process/**
- **Environmental Results Program.**

(IV. Issues and Recommendations: Chapter 5. Resources Conservation and Environmental Protection: Resolution 18: Establish a Risk-Based, Multi-Media, Environmental Compliance Assurance Program.

7. Eliminate reporting requirement for the Pesticide Contamination Prevention Act—Report on status of groundwater protection data gaps and the results for products screened by the specific numerical values.

(IV. Issues and Recommendations: Chapter 5. Resources Conservation and Environmental Protection: Resolution 25: Streamline and Eliminate Duplicative Reporting for the Environmental Protection and Resources Agencies.)

8. Department of Fish and Game CEQA filing fees – DPR Fees.

(IV. Issues and Recommendations: Chapter 5. Resources Conservation and Environmental Protection: Resolution 34: Improve Collection of Department of Fish and Game Fees for Reviewing Environmental Reports.)

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California Performance Review
Government for the People for a Change

II. “Form Follows Function”

California’s government must reorganize to meet the demands of modern California. In this volume, CPR proposes new framework that aligns programs by function, consolidates shared services and abolishes outdated entities.

Chapter 6: The Department of Environmental Protection

Appendices:

- Evaluating California’s Boards and Commissions
- Legal Framework for Reorganization

II. “Form Follows Function”

Chapter 6: The Department of Environmental Protection

INTRODUCTION

California once led the nation in its work to protect the environment. California passed the Air Pollution Control Act in 1947, five years before the federal government enacted comprehensive legislation regulating air pollution. Today, while California is still a pioneer in its efforts to protect the environment, the organization of its statewide environmental protection agency has fallen behind the times.

The California Environmental Protection Agency (Cal-EPA) was created in 1991 to reorganize California’s environmental programs. Unfortunately, while the goal of the reorganization was to create an integrated environmental protection program, Cal-EPA continues to operate as a collection of boards and commissions without a unified environmental protection strategy. The way hazardous materials are regulated and toxic waste is cleaned up exemplifies the fragmented nature of California’s public health and environmental protection efforts.

Three agencies within Cal-EPA, and other entities not under its control are principally responsible for toxic cleanup. Instead of added protection this fragmentation means agencies are not sure how many toxic cleanup sites exist; different cleanup processes and standards are used by each agency for the same toxic contaminants under identical circumstances; and, for any given cleanup, it is unclear which agency is responsible. Organizational obstacles have blocked ad hoc, intra-agency, and even legislative attempts to resolve this situation. Continuing population growth and development in California demand that efforts to keep the air, land and water clean must be efficient and focused.

FINDINGS OF THE CALIFORNIA PERFORMANCE REVIEW

The California Performance Review found that the current organization of Cal-EPA has four key problems:

1. **The current framework for environmental regulation lacks accountability.** Responsibility for environmental and public health protection is divided between 16 legislatively created independent boards and commissions, including: the Air Resources Board, the Integrated Waste Management Board, the Water Resources Control Board and the regional Water Resources Control Boards. The members of these boards and commissions are not accountable to the Secretary or the Governor. As

a result, it is difficult to implement a coherent environmental protection policy.

2. **Environmental decisions do not reflect an integrated understanding of different types of pollution.** Because each board or commission is responsible for a specific type of pollution, decision-makers do not focus on how their choices affect other areas of the environment. For instance, MTBE, a gasoline additive created to reduce air pollution, resulted in severe water pollution in the Santa Monica and Lake Tahoe basins.
3. **There is significant overlap in jurisdictional functions within Cal-EPA.** For example, the Department of Toxic Substances Control and the regional Water Quality Control Boards both have jurisdiction over cleaning up certain hazardous materials in the land and water. This duplication wastes resources and makes responsibilities unclear.
4. **Environmental programs are dispersed throughout government.** Responsibility for water quality, waste management, and responding to environmental emergencies are still split between the Department of Health Services, the Resources Agency and Cal-EPA.

PROPOSED ORGANIZATIONAL IMPROVEMENTS

The proposed framework would transform Cal-EPA from a collection of separate boards and commissions into an integrated Department of Environmental Protection to effectively protect California's environment.

Specifically, the Department of Environmental Protection should include the following organizational units:

- Office of the Secretary for Environmental Protection;
- Division of Air Quality;
- Division of Water Quality;
- Division of Pollution Prevention, Recycling and Waste Management;
- Division of Site Cleanup and Emergency Response; and
- **Division of Pesticide Regulation.**

A Office of the Secretary

1. **Management Goal:** The Secretary of the Department of Environmental Protection should be directly accountable for the protection of California's environment. The Secretary should provide an integrated perspective on environmental protection that takes into account air, water, and solid waste pollution. The Secretary should also reduce overhead costs by consolidating administrative functions within the Department.

2. Purpose and Functions: The Secretary should serve as the primary point of accountability for managing environmental protection programs, reporting directly to the Governor. The Secretary should lead the divisions within the new Department.

3. Transferred Functions: All program support functions should be transferred to the Office of the Secretary, including administrative services (information technology, budgets and accounting, personnel and business services), legal counsel, public affairs, legislative affairs and regulatory and policy development from the boards, departments and offices of Cal-EPA.

F. Division of Pesticide Regulation

1. Management Goal: The Division's primary goal should be to regulate the use of pesticides in agriculture to keep food safe, promote worker safety and protect the environment. The Division of Pesticide Regulation should also strive to minimize the burden of regulation on the affected industries, consistent with public safety.

2. Purpose and Functions: The Division of Pesticide Regulation should regulate the registration, sale and use of pesticides for indoor and outdoor use.

3. Transferred Functions: All functions and staff from the Department of Pesticide Regulation and the Structural Pest Control Board within the Department of Consumer Affairs should be transferred to the Division of Pesticide Regulation.

Impact on Current Agency Index

CURRENT DEPARTMENT/ENTITY	ACTION	NEW DEPARTMENT
Pesticide Regulation, Department of (except Medical Technology Branch)	E	Environmental Protection
Structural Pest Control Board	E	Environmental Protection

E: Entity eliminated, function moved to the listed department

II. “Form Follows Function”

Chapter 6: The Department of Environmental Protection Appendices

- Evaluating California’s Boards and Commissions

ENVIRONMENT AND NATURAL RESOURCES

Structural Pest Control Board

Eliminate the Board because it is not needed to regulate the structural pest control industry. The operations should be performed by the new Department of Environmental Protection. Independent reviews of appeals should be performed by administrative law judges within the Office of Management and Budget. The resulting recommended decisions should be affirmed or rejected by the Secretary of the Department of Environmental Protection.

II. “Form Follows Function”

Chapter 6: The Department of Environmental Protection

Appendices

Legal Framework For Reorganization

Implementing Statutes

California State Government is a complex web of organizational entities consisting of 11 agencies, 79 departments and more than 300 boards and commissions. This appendix contains a conceptual draft legislative framework to reorganize state government reflecting the form follows function approach identified by the California Performance Review.

FOOD AND AGRICULTURAL CODE

11401.1. "Department" means the ~~Department of Pesticide Regulation~~
Department of Environmental Protection.

11401.2. "Director" or "Secretary" means the ~~Director of Pesticide Regulation~~
Secretary of the Department of Environmental Protection.

~~11451. There is in the California Environmental Protection Agency the
Department of Pesticide Regulation.~~

~~11452. The Department of Pesticide Regulation is under the control of an
executive officer known as the Director of Pesticide Regulation, who shall be
appointed by, and hold office at the pleasure of, the Governor. The director shall
receive the annual salary provided by Chapter 6 (commencing with Section
11550) of Part 1 of Division 3 of Title 2 of the Government Code. Upon
recommendation of the Secretary for Environmental Protection, the Governor
may appoint up to two subordinate officers under this section who shall hold
office at the pleasure of the Governor. The salaries of these subordinate officers
shall be fixed in accordance with law. These subordinate officers shall have such
duties as shall be assigned by the secretary and shall be responsible to the
secretary for the performance thereof. Commencing July 1, 2005, any reference
to the Director or Deputy Director of the Department of Pesticide Regulation shall
refer to these subordinate officers.~~

~~11452.5. The Governor may appoint a deputy to the director. The deputy director
shall hold office at the pleasure of the director, and shall receive a salary fixed by
the director with the approval of the Department of Personnel Administration.~~

~~11453. The director has the powers of a head of the department pursuant to
Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of
the Government Code.~~

11454. The Department of Environmental Protection hereby succeeds to, and is
vested with, all the powers, duties, responsibilities, obligations, liabilities, and
jurisdiction of the Department of Pesticide Regulation, which effective July 1,
2005 will no longer exist. Commencing from that date, any reference to the
Department of Pesticide Regulation will mean and shall refer to the Department
of Environmental Protection. The department or its successor succeeds to, and
is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction
of the Department of Food and Agriculture relating to the regulation of pesticides.
The powers, functions, and responsibilities of the department shall include, but
not be limited to, the following:

- (a) The functions and responsibilities set forth in this division.
- (b) The functions and responsibilities set forth in Chapter 1 (commencing with

Section 12501), Chapter 2 (commencing with Section 12751) excepting Article 2.5 (commencing with Section 12786), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing with Section 14101), Chapter 3.6 (commencing with Section 14151), and Chapter 7 (commencing with Section 15201) of Division 7.

12752.2. “Department” means the ~~Department of Pesticide Regulation~~ Department of Environmental Protection when used in Chapter 1 (commencing with Section 12501), Chapter 2 (commencing with Section 12751) excepting Article 2.5 (commencing with Section 12786), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing with Section 14101), Chapter 3.6 (commencing with Section 14151), and Chapter 7 (commencing with Section 15201).

Article 4 (commencing with section 12818) is added to Chapter 1, Part 2.5, Division 3, Title 2 of the Government Code.

12818. Effective July 1, 2005, there is hereby created in state government the Department of Environmental Protection, to be headed by a Secretary, who shall be appointed by, and hold office at the pleasure of, the Governor, subject to Senate confirmation. Commencing July 1, 2005, any reference in any law to the “California Environmental Protection Agency” shall refer to the Department of Environmental Protection.

12818.1. The Governor shall appoint, upon the nomination of the Secretary, such officers as are deemed necessary to manage and direct the functions of the Department.

12818.2 . The Department of Environmental Protection hereby succeeds to, and is vested with, all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the following Agencies, Boards, and Departments which effective July 1, 2005, shall no longer exist:

- (a) California Environmental Protection Agency (with the exception of the Office of Environmental Health Hazard Assessment, which is transferred to the Department of Health and Human Services);
- (b) Department of Toxics Substances Control; (with the exception of those functions transferred to the Department of Public Safety and Homeland Security).
- (c) Department of Pesticide Regulation;
- (d) Structural Pest Control Board;
- (e) State Water Resources Control Board (with the exception of functions related to water rights allocation, which are transferred to the Department of Natural Resources;
- (f) California Regional Water Quality Control Board, North Coast Region;
- (g) California Regional Water Quality Control Board, San Francisco Bay Region;
- (h) California Regional Water Quality Control Board, Central Coast Region;

- (i) California Regional Water Quality Control Board, Los Angeles Region;
- (j) California Regional Water Quality Control Board, Central Valley Region;
- (k) California Regional Water Quality Control Board, Lahontan Region;
- (l) California Regional Water Quality Control Board, Colorado River Basin Region;
- (m) California Regional Water Quality Control Board, Santa Ana Region;
- (n) California Regional Water Quality Control Board, San Diego Region;
- (o) California Air Resources Board; and
- (p) California Integrated Waste Management Board.

For purposes of this article, the above entities shall be known as predecessor entities.

12818.3 . The Department of Environmental Protection hereby succeeds to, and is vested with, all the powers, duties, obligations, liabilities, jurisdiction, and responsibilities, of the following entities within the Agencies, Offices, Commissions, Boards, and Departments specified below, which entities, effective July 1, 2005, shall no longer exist within those Agencies, Offices, Commissions, Boards, and Departments:

- (a) Office of Drinking Water within the Department of Health Services (Health & Saf. Code section 116270 et seq.);
- (b) Shell Fish Monitoring Program of the Department of Health Services (Fish & Game Code section 5669 et seq.);
- (c) Radiological Health Branch within the Department of Health Services with the exception of the Registration, Certification, Mammography Standards Sections, which shall be transferred to the Department of Health and Human Services (Health & Saf. Code section 114650 et seq.);
- (d) Medical Waste Program of the Department of Health Services (Health & Saf. Code section 117600 et seq.);
- (e) Division of Recycling within the Department of Conservation (Pub. Res. Code sections 14500 et seq., 18000 et seq., 19500 et seq.);
- (f) Oil Spill Prevention and Response Program of the Department of Fish and Game (Gov. Code sections 8670.1 et seq.);
- (g) Oil Spill Response program within the State Lands Commission (Pub. Res. Code sections 8750 et seq.);
- (h) Ballast Water Program within the State Lands Commission (Pub. Res. Code sections 8750 et seq.);
- (i) Hazardous Materials Program of the Office of Emergency Services (Health & Safety Code section 25500 et seq.); and
- (j) Oil Spill Program of the California Coastal Commission.

For purposes of this article, the above entities shall be known as predecessor entities.

12818.4 . (a) The Secretary shall have the powers of a head of a department pursuant to Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Without limiting any other powers or duties, the secretary shall assure compliance with the terms of any state plan, memorandums of understanding, administrative order, interagency agreements, assurances, single state agency obligations, federal statute and regulations, and any other form of agreement or obligation that vital government activities rely upon or are a condition to the continued receipt by the department of state or federal funds or services. This includes, but is not limited to the designation, appointment, and provision of individuals, groups, and resources to fulfill specific obligations of any agency, board or department that is abolished pursuant to Sections 12818.2 and 12818.3.

12818.5. All regulations adopted by the predecessor entities and any of their predecessors in effect immediately preceding the effective date of this section shall remain in effect and shall be fully enforceable unless and until readopted, amended, or repealed. Any statute, law, rule, or regulation now in force, or that may hereafter be enacted or adopted with reference to the predecessor entities or any of their predecessors shall mean the Department of Environmental Protection. Any action by or against the predecessor entities or any of their predecessors shall not abate but shall continue in the name of the Department of Environmental Protection, and the Department of Environmental Protection shall be substituted for the predecessor entities and any of their predecessors by the court wherein the action is pending. The substitution shall not in any way affect the rights of the parties to the action.

12818.6. No contract, lease, license, bond, or any other agreement to which the predecessor entities or any of their predecessors are a party shall be void or voidable by reason of this act, but shall continue in full force and effect, with the Department of Environmental Protection assuming all of the rights, obligations, liabilities, and duties of the predecessor entities and any of their predecessors. That assumption by the Department of Environmental Protection shall not in any way affect the rights of the parties to the contract, lease, license, or agreement. Bonds issued by the predecessor entities or any of their predecessors on or before July 1, 2005, shall become the indebtedness of any newly created entity. Any on-going obligations or responsibilities of the predecessor entities for managing and maintaining bond issuances shall be transferred to the newly created entity without impairment to any security contained in the bond instrument.

12818.7. On and after July 1, 2005, the unexpended balance of all funds available for use by the predecessor entities or any of their predecessors in

carrying out any functions transferred to the Department of Environmental Protection shall be available for use by Department of Environmental Protection. All books, documents, records, and property of the predecessor entities shall be transferred to the Department of Environmental Protection.

12818.8. On and after July 1, 2005, positions filled by appointment by the Governor in the predecessor entities shall be transferred to the Department of Environmental Protection. Individuals in positions transferred pursuant to this section shall serve at the pleasure of the Governor. Titles of positions transferred pursuant to this section shall be determined by the Secretary with the approval of the Governor. Salaries of positions transferred shall remain at the level established pursuant to law on June 30, 2005.

12818.9. Any officer or employee of the predecessor entities who is performing a function transferred to the Department of Environmental Protection and who is serving in the state civil service, other than as a temporary employee, shall be transferred to the Department of Environmental Protection pursuant to the provisions of Government Code Section 19050.9.

The status, position, and rights of any officer or employee of the predecessor entities and continuing entities shall not be affected by the transfer and shall be retained by the person as an officer or employee of the Department of Environmental Protection, as the case may be, pursuant to the State Civil Service Act (Part 2 [commencing with Section 18500] of Division 5 of Title 2 of the Government Code), except as to a position that is exempt from civil service.

Article 5 (commencing with section 12820) is added to Chapter 1, Part 2.5, Division 3, Title 2 of the Government Code.

12820. Effective July 1, 2005, the Department of Food and Agriculture is vested with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction for the administration and enforcement of the following statutory authorities:

- (a) Duties regarding food safety and enforcement (H&S 109875-111225); and
- (b) Duties regarding wholesale and retail food (H&S 111940-114460).

For purposes of this article, the above entities shall be known as predecessor entities.

12820.1 (a) The Secretary of the Department of Food and Agriculture shall have the powers of a head of a department pursuant to Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code to administer these provisions.

(b) Without limiting any other powers or duties, the secretary shall assure compliance with the terms of any state plan, memorandums of understanding, administrative order, interagency agreements, assurances, single state agency obligations, federal statute and regulations, and any other form of agreement or obligation that vital government activities rely upon or are a condition to the continued receipt by the department of state or federal funds or services. This includes, but is not limited to the designation, appointment, and provision of individuals, groups, and resources to fulfill specific obligations of any agency, board or department that is assumed pursuant to Section 12820.

12820.2. All regulations adopted by the predecessor entities and any of their predecessors in effect immediately preceding the effective date of this section shall remain in effect and shall be fully enforceable unless and until readopted, amended, or repealed. Any statute, law, rule, or regulation now in force, or that may hereafter be enacted or adopted with reference to the predecessor entities or any of their predecessors shall mean the Department of Food and Agriculture. Any action by or against predecessor entities or any of their predecessors shall not abate but shall continue in the name of the Department of Food and Agriculture, and the Department of Food and Agriculture shall be substituted for the predecessor entities and any of their predecessors by the court wherein the action is pending. The substitution shall not in any way affect the rights of the parties to the action.

12820.3. No contract, lease, license, bond, or any other agreement to which the predecessor entities or any of their predecessors are a party shall be void or voidable by reason of this act, but shall continue in full force and effect, with the Department of Food and Agriculture assuming all of the rights, obligations, liabilities, and duties of the predecessor entities and any of their predecessors. That assumption by the Department of Food and Agriculture shall not in any way affect the rights of the parties to the contract, lease, license, or agreement.

Bonds issued by the predecessor entities or any of their predecessors on or before July 1, 2005, shall become the indebtedness of any newly created entity. Any on-going obligations or responsibilities of the predecessor entities for managing and maintaining bond issuances shall be transferred to the newly created entity without impairment to any security contained in the bond instrument.

12820.4. On and after July 1, 2005, the unexpended balance of all funds available for use by the predecessor entities or any of their predecessors in carrying out any functions transferred to the Department of Food and Agriculture shall be available for use by Department of Food and Agriculture. All books, documents, records, and property of the predecessor entities shall be transferred to the Department of Food and Agriculture.

12820.5 . On and after July 1, 2005, positions filled by appointment by the Governor in the predecessor entities shall be transferred to the Department of Food and Agriculture. Individuals in positions transferred pursuant to this section shall serve at the pleasure of the Governor. Titles of positions transferred pursuant to this section shall be determined by the Secretary with the approval of the Governor. Salaries of positions transferred shall remain at the level established pursuant to law on June 30, 2005.

12820.6 . On and after July 1, 2005, any officer or employee of the predecessor entities who is performing a function transferred to the Department of Food and Agriculture and who is serving in the state civil service, other than as a temporary employee, shall be transferred to the Department of Food and Agriculture pursuant to the provisions of Government Code Section 19050.9.

The status, position, and rights of any officer or employee of the predecessor entities and continuing entities shall not be affected by the transfer and shall be retained by the person as an officer or employee of the Department of Food and Agriculture, as the case may be, pursuant to the State Civil Service Act (Part 2 [commencing with Section 18500] of Division 5 of Title 2 of the Government Code), except as to a position that is exempt from civil service.



California Performance Review
Government for the People for a Change

IV. “Issues and Recommendations”

The fourth volume of the CPR report contains 279 government issues with over 1,200 recommendations that have the potential to save the state \$32 billion over the next five years and guide California's government into the 21st century.

Chapter 5: Resource Conservation and Environmental Protection

IV. “ISSUES AND RECOMMENDATIONS

Chapter 5: Resources and Conservation and Environmental Protection

Resolution 5: Consolidate Pest Control Licensing and Regulatory Programs

Summary

The Department of Pesticide Regulation and the Structural Pesticide Control Board (SPCB) administer similar pest control regulatory and licensing programs. Transferring SPCB’s program responsibilities to DPR would result in a more efficient and cost-effective statewide pest control and licensing program.

Background

The Department of Pesticide Regulation (DPR) in the California Environmental Protection Agency is recognized by the U.S. Environmental Protection Agency and state law as the lead agency responsible to regulate the possession, sale and use of all pesticides in California. DPR oversees pesticide product registration; statewide licensing of commercial pesticide applicators and dealers; environmental monitoring; private applicator certification by county agricultural commissioners; inspection and investigation of pesticide use, complaints, and enforcement actions on violations generally through the county agricultural commissioners; and pesticide residue testing of produce.

DPR licenses about 4,100 pest control businesses and 18,000 individuals including pest control companies, gardeners, pesticide brokers, commercial applicators and agricultural pest control advisors spraying pesticides outside of the home. DPR administers the private applicator certification program conducted by the county agricultural commissioners, who certify approximately 28,000 individuals. Licensees must take an exam and renew their license every one to three years, depending on the type of license, and pay a fee of between \$25 and \$160.

The SPCB is housed in the Department of Consumer Affairs. The SPCB is comprised of seven members, four of whom represent the public and three of whom represent the pest control industry. The SPCB licenses structural pest control businesses and individuals to perform pest control services inside of homes and other structures. It also fields consumer complaints about pesticide businesses.

SPCB licenses about 2,200 companies and 18,000 individuals spraying pesticides on the inside of the home. Businesses and individuals will have a license from both the SPCB and the DPR if they provide pesticide services both inside and outside of the home. These licensees must take an exam every three years and pay a fee of between \$15 and \$150. About 2,200 individuals are certified under this program through an exam process to renew

their certification. The Department of Health Services' Environmental Management Branch also certifies vector control technicians employed by public agencies to use pesticides.

In addition to the state's role in pesticide management, county agricultural commissioners are responsible for assuring that all licensed and unlicensed applicators use pesticides according to state and federal law. DPR and SPCB both use the services and expertise of county agricultural commissioners to inspect and investigate consumer complaints about pest control services. [10]

DPR regulates pesticides under a comprehensive program that encompasses not only the enforcement of pesticides in agricultural and urban environments, but also prevention of environmental contamination, protection of workers, endangered species protection, promotion of least-hazardous pest management practices, and community relations. The department, through its county agricultural commissioners, inspects pesticide applications including structural pesticide and vector (rats, mosquitoes, etc.) control applications and provides oversight for county agricultural programs.

The only elements of pesticide regulation that DPR does not directly administer are structural pest control licensing and the vector control program. However, DPR has a memorandum of understanding with SPCB and the Department of Health Services, Environmental Management Branch that guides the interactions of the programs. Still, there are several areas where DPR and SPCB have overlapping authorities, including administrative actions, criminal and civil actions, a disciplinary review committee and a research advisory panel.

The DPR and SPCB have parallel regulatory and enforcement authorities. California is one of only five states that do not have consolidated certification, training, and enforcement programs for agricultural, non-agricultural and structural pest control. Combining licensing and oversight functions over the state's pesticide management activities in DPR would increase efficiency and result in consistent, statewide administration of pesticide regulations and statutes.

Recommendation

The Governor should work with the Legislature to eliminate the Structural Pest Control Board and transfer license functions and oversight responsibilities for structural pest control businesses to the Department of Pesticide Regulation within the California Environmental Protection Agency, or its successor.

Fiscal Impact

Funding for DPR in Fiscal Year 2003–2004 was \$57 million with a staff of 350. Their work is augmented by more than 400 county agricultural inspectors/investigators working for the county agricultural commissioners on local pesticide enforcement. The department's revenue is drawn from fees on

pesticide registrations, pesticide sales—including those used in structural settings—and professional licenses.

The budget for SPCB in FY 2003–2004 was \$3.3 million with a staff of 27. Board members receive per diem and are reimbursed for travel expenses. The board does not receive any General Fund support. It is funded from license fees paid by pesticide applicators and by a \$1.50 wood destroying organism fee paid to the state from pest and termite inspections, including those inspections performed as part of most home sales.

There is no General Fund savings from this recommendation. Special fund savings are estimated at \$25,000 annually from transferring the functions performed by the part-time board to the DPR. Additional annual savings of \$487,500 would result from consolidating the examination and licensing programs and eliminating five positions that perform some of the Board’s functions, and provide support for board member activities and meetings.

Special Fund

(dollars in thousands)

Fiscal Year	Savings	Costs	Net Savings (Costs)	Change in PYs
2004-05	\$0	\$0	\$0	0
2005-06	\$512	\$0	\$512	(5)
2006-07	\$512	\$0	\$512	(5)
2007-08	\$512	\$0	\$512	(5)
2008-09	\$512	\$0	\$512	(5)

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from 2003-04 expenditures, revenues and PYs.

Resolution 16: Streamline the Department of Pesticide Regulation's Registration Process

Summary

The Department of Pesticide Regulation's process for registering a new pesticide product or amending a currently registered product requires staff time and resources for activities that primarily protect the business interests of data owners, duplicates federal registration processes that already provide adequate protection to data owners, and creates marketplace barriers for pesticide products. This duplication of effort does nothing to improve public health or the environment. Department staff also perform some consumer protection functions that divert resources away from focusing on core environmental protection functions. State law and regulation should be amended to address these issues.

Background

Letters of authorization

According to the U.S. Environmental Protection Agency (U.S. EPA), before a pesticide is marketed and used in the United States, the U.S. EPA evaluates it to ensure it will meet federal safety standards that protect human health and the environment. The U.S. EPA grants a license or "registration" for pesticides meeting these requirements. This permits the distribution, sale and use of pesticides according to specific use directions and requirements identified on the label.

Pesticide registration is a scientific, legal, and administrative process through which the U.S. EPA examines the ingredients of the pesticide; the particular site or crop on which it is to be used; the amount, frequency, and timing of its use; and the appropriate storage and disposal practices. In evaluating a pesticide registration application, the U.S. EPA assesses a wide variety of potential human health and environmental effects associated with use of the product. The producer of the pesticide must provide data from tests done according to U.S. EPA regulatory guidelines. These data must address concerns pertaining to the identity, composition, potential adverse effects, and environmental fate of each pesticide. For example, the tests evaluate whether a pesticide has the potential to cause harmful effects on humans, wildlife, fish, and plants, including endangered species and non-target organisms, as well as possible contamination of surface water or ground water from leaching, runoff, and spray drift. Potential human risks range from short-term toxicity to long-term effects such as cancer and reproductive system disorders.

Applicants for U.S. EPA registration of a pesticide product containing the same active ingredients as products already registered (even though the formulation may not be the same) are not required to submit data; instead,

they can simply cite “all” data on file with the U.S. EPA that was previously submitted by other registrants. Although other registrants can reference the data, there is a 15-year window of protection to owners of that data. If other registrants want to use these data for their submissions during the 15-year window, they are required to submit a letter of authorization and pay the owner of that original data. After 15 years, any registrant can use the data without a letter of authorization from the original data owner.

Similar to federal requirements, state law requires that before a pesticide can be marketed and used here, the California Department of Pesticide Regulation (DPR) must evaluate it to ensure it will not harm human health or the environment. Pesticides that pass DPR’s scientific, legal, and administrative process, which is very similar to the U.S. EPA’s process described above, are granted a license that permits their sale and use according to requirements set by DPR to protect human health and the environment.

In contrast to federal law, however, applicants registering a pesticide in California must submit all required data or specifically cite relevant data currently on file with DPR. If applicants do not own the cited data, they must obtain a letter of authorization from the data owner. This applies to the use of data generated by another registrant even after the 15-year window of federal protection has expired. DPR must return applications that do not include a letter of authorization when one is required even though the submitted data may show the product to be safe or the application references data DPR has already reviewed. If an applicant cannot obtain a letter of authorization from the data owner, the applicant must conduct and submit new studies to DPR even though the information in those studies is duplicative of data already reviewed and on file with DPR. In these cases, DPR staff must re-review data they have previously reviewed for other products.

Tracking and researching the ownership of data, returning applications that do not have letters of authorization, and processing and reviewing new studies that are duplicative of studies supporting similar products DPR has already registered requires DPR to expend a significant amount of staff time and resources on unnecessary administrative tasks that do not improve public health or the environment. It also adds to registrants’ costs by lengthening the time required to bring a new pesticide to market.

Efficacy data reviews

The advent of pesticide regulatory programs at the state and federal levels began with an emphasis on ensuring that products are effective or efficacious. Efficacy reviews determine whether a product performs as claimed. They do not evaluate health and safety claims. Thus, efficacy reviews are a consumer protection function rather than an environmental protection function. Over the years, the focus of pesticide regulatory programs has shifted toward protection of human health and the environment. The consumer protection

aspects of pesticide regulatory programs at the federal level and in most states have been de-emphasized or eliminated.

California remains the exception to this evolution. State law requires DPR to ensure the efficacy of pesticides used in California. Specifically, Food and Agricultural Code Section 11501 requires DPR to assure users that pesticides are properly labeled and are appropriate for the use designated by the label; Section 12824 requires DPR to endeavor to eliminate from use in California any pesticide not beneficial for the purposes for which it is sold; and Section 12825 authorizes DPR to cancel the registration of any pesticide that is of little or no value for the purpose for which it is intended.

Based upon these sections of law, DPR adopted regulations that require it to review efficacy claims for all pesticides. Verification of efficacy claims diverts DPR staff resources away from performing core environmental protection functions, such as health and safety reviews, to performing a consumer protection function. These requirements exceed those of the federal government and any other state, and can be eliminated through changes to state law.

Recommendations

- A. The Governor should work with the Legislature to repeal Section 12811.5 of the Food and Agriculture Code, which prohibits the California Department of Pesticide Regulation (DPR) from considering data in support of a registration unless the registrant has received written permission from the original data submitter.**

Repealing this section would allow DPR to rely upon any data on file, regardless of data ownership, to support the registration of a new pesticide product or an amendment to a currently registered pesticide product. Eliminating this additional authorization step would save DPR staff time and resources without affecting its core mission of protecting public health and the environment. It would also accelerate DPR's decision-making process on registration requests. DPR should redirect staff resources toward completing pesticide health and safety reviews and other critical tasks necessary to register pesticides in the state.

- B. The DPR should amend its regulations regarding the review of efficacy data to make these regulations consistent with United States Environmental Protection Agency requirements. (U.S. EPA requires applicants to assure themselves through testing that their products are efficacious, but it does not typically require applicants to submit their efficacy data when registering pesticides.)**

DPR would only review efficacy data for public health pesticides (sanitizers, disinfectants, and sterilants). If a registrant submits a U.S.

EPA review of efficacy data for these pesticides, DPR would review that evaluation and only refer to the efficacy data if there are any questions DPR has about the U.S. EPA evaluation. DPR would reserve the right to require that efficacy data be submitted upon request prior to or any time after registration. DPR should redirect staff resources toward completing pesticide health and safety reviews and other critical tasks necessary to register pesticides in the state.

Fiscal Impact

DPR's goal and commitment to the pesticide industry is to register pesticides within 60 days of receiving the registration application. Currently, DPR has a registration backlog of more than 600 pesticides that have exceeded the 60-day window (hardly anything gets through in 60 days). DPR has 20 staff positions dedicated to registering pesticides. DPR estimates that about 50 percent of its registration staff's time is spent dealing with issues related to letters of authorization and efficacy data reviews.

DPR estimates that by eliminating the requirement for letters of authorization and amending its efficacy data requirements it could meet the 60-day registration window for 75 to 90 percent of all product registrations and label amendments.

Resolution 18: Establish a Risk-Based, Multi-Media, Environmental Compliance Assurance Program

Summary

Annually, thousands of mandated compliance inspections are performed at small and mid-sized businesses under programs regulated by the California Environmental Protection Agency without regard to the regulatory history of the business, or its relative risk to the community and the environment. A risk-based, multi-media (air, water, land) inspection protocol should be developed to ensure the efficient use of resources and the consistent application of regulations.

Background

The California Environmental Protection Agency (Cal-EPA) issues permits for regulated activities and routinely inspects against permit requirements according to an established schedule. These routine inspections are not standardized, and the frequency and intensity of inspections are not based on the risk the regulated activity presents to the community and environment. Enforcement follow-up to inspections can be highly variable. These practices result in the inefficient use of resources, and create an uneven regulatory climate across the state and environmental programs.

Inspections as usual

Routine inspections are not standardized, and the frequency and intensity of inspections is not based on the risk of the regulated activity to the community and environment. This approach results in businesses that present the greatest danger to the community and the environment being inspected with the same frequency and in the same manner as those businesses that present less risk. All businesses that handle hazardous materials and waste are subject to compliance oversight by federal, state, or local agencies, and are typically subject to compliance inspections at regular intervals. No adjustment in the inspection cycle is made for those businesses that maintain a high level of compliance with environmental laws. For example, solid waste landfills are required to be inspected each month even though they have a history of compliance, while a business located near a residential area that handles thousands of gallons of hazardous materials is inspected only every three years.

California's current environmental regulatory system relies heavily on an approach that measures effectiveness by the number of inspections and enforcement actions taken, instead of using improved compliance as a measure of success. The state does not have a compliance assurance program that uses a wide range of regulatory tools, such as rigorous enforcement activities and providing assistance to regulated entities that result in compliance with environmental regulations and actual improvements

in environmental quality. Local and state agencies regulate approximately 150,000 sites and conduct at least 100,000 compliance inspections each year. In most program areas, the regulatory activities of these state and local agencies are not coordinated.

Inspections are not based on public risk

Inspection frequencies are not based on the risk the regulated activity presents to the public or on the business' compliance history. For example, the California Accidental Release Program regulates businesses that handle extremely hazardous substances in quantities that can have potentially irreversible effects on health and the environment if an accident occurs. These regulated businesses are categorized into one of three program levels that determine the accident prevention-related activities a business is required to develop and implement. The program levels are determined by clear environmental, physical, and safety factors including the business' compliance and accident history, the potential off-site impacts, and the type of safety equipment that has been installed. All regulated businesses, however, are subject to compliance inspections every three years and periodic audits, regardless of the risk-based program level. In fact, large chemical companies are subject to the same inspection frequency as businesses handling a single cylinder of compressed gas.

Inspections lack multi-media perspective

A legislative report prepared by Cal-EPA on cross-media coordination concluded that the state should "pursue whatever reforms are needed at both the agency and [the program] level to achieve more cross-media coordination." The report pointed out that "Cal/EPA has not effectively implemented mechanisms for preventing, identifying, and responding to environmental problems involving multiple media [air, water, land]. The agency can and should lead its boards, departments and office towards greater cross-media consideration and coordinated action." The report pointed out that the current lines of accountability within the agency "are blurred due to the medium-specific laws and organizational structure under which the agency works," and that "there is no institutional structure to encourage or require cross-media actions."

The Deputy Secretary for Law Enforcement and Counsel at Cal-EPA has statutory authority to develop multi-media compliance for regulatory programs, including local programs that "take consistent, effective, and coordinated compliance and enforcement actions to protect public health and the environment."

Smarter inspecting

Many states have recognized the limited effectiveness of existing regulatory programs for small and mid-sized businesses. These states make maximum use of limited resources to achieve the highest level of regulatory compliance. Massachusetts has been a leader in this effort, creating the “Environmental Results Program.” This program seeks to achieve broad compliance across the regulated community and fundamentally changes the approach to compliance by engaging business sectors in developing comprehensive environmental requirements and practices and using self-certifications coupled with the threat of inspections. A key component of self-certification is reporting areas of non-compliance, and developing and submitting a “Return to Compliance Plan.”

The Environmental Results Program makes maximum use of compliance assistance at the outset to help the business sector understand how to achieve and remain in compliance. Industry-specific workbooks and workshops are developed and presented at the beginning of a focused compliance assurance effort. This approach creates incentives for the owners of the businesses to take personal responsibility for complying with environmental regulations.

In developing the Environmental Results Program, Massachusetts addressed a number of deficiencies in its traditional inspection and enforcement approach. It wanted to create more comprehensive environmental performance; promote lasting industry-wide change; encourage multi-media compliance; and promote pollution prevention. The state recognized that small and mid-sized businesses could benefit from more compliance assistance, and it believed that costs could be cut for both industry and government without sacrificing results.

Measurement of regulatory performance is critical to this program because it enables the state to target its limited resources on “problem” facilities. Mandatory inspection schedules are replaced by targeted inspections focused on facilities where self-certification has raised a “red flag,” non-responding facilities, facilities that have received citizen complaints, or facilities where self-certification indicates multiple improvements are needed. All Return to Compliance plans that are received are reviewed to determine if the content and schedule are appropriate and acceptable.

Since its creation in 1997, the program has been endorsed and supported by the U.S. Environmental Protection Agency. This new approach has also been adopted and implemented by 10 other states including Delaware, Tennessee, Rhode Island and Florida, covering such industrial sectors as auto repair facilities, auto body shops, auto painting shops, photoprocessors, dry cleaners, printers, auto salvage yards, underground storage tank owners and industrial wastewater generators.

Three elements of the Environmental Results Program are particularly important for California; pollution prevention, a multi-media approach and worker health and safety. Pollution prevention is integrated into the regulatory programs because the best way to deal with waste is not to create it in the first place. A complete multi-media approach to regulatory compliance is utilized for each industrial sector. Finally, worker health and safety issues are addressed as part of a complete review of the facility.

Given the fragmented nature of California's regulatory programs and its separate programs for pollution prevention and worker health and safety, using the Environmental Results Program approach could achieve a more efficient integration of these disparate programs. This also could result in a comprehensive environmental and occupational health and safety effort for affected industry sectors.

Another example of a risk-based regulatory approach exists in food safety programs. Over the last decade, an approach called "Hazard Analysis and Critical Control Point" (HACCP) was implemented for the nation's food safety programs. This effort places increased responsibility on the regulated community to improve food handling practices to reduce the risk of food-borne illnesses. Program guidelines have been developed jointly by the U.S. Food and Drug Administration, U.S. Department of Agriculture, and the National Advisory Committee on Microbiological Criteria for Foods.

As a result of its success in reducing food-borne illnesses, HACCP has been established in all federal, state and local food safety programs. One report indicates that, as a result of the HACCP, a 50 percent reduction in the cases of salmonella in our food supply had been achieved. It is this type of dramatic results in improved public health and environmental protection that may be replicated through implementation of a risk-based, compliance assurance program within Cal-EPA.

Standardized enforcement processes

Key elements of a compliance assurance program include compliance inspections and appropriate enforcement follow-up. When inspections uncover violations, enforcement actions must be taken to ensure the business returns to compliance. Appropriate penalties must be imposed to deter future violations and offset any economic advantage a violator might realize by skirting the law. California's environmental protection programs do not have common enforcement mechanisms and processes available. This lack of uniformity requires additional effort to coordinate multi-media enforcement. It also increases the training needs for those who must deal with numerous processes. It also may result in violations not being addressed in a timely and uniform manner. Standardization of enforcement mechanisms and processes within Cal-EPA would improve the ability of staff within all environmental programs to conduct multi-media compliance assurance programs.

Recommendations

- A. The California Environmental Protection Agency (Cal-EPA), or its successor, should develop a risk-based, multi-media inspection protocol. The protocol should identify all statutory and regulatory changes that must be made in order to implement the risk-based, multi-media inspection protocol. This protocol should be developed by July 1, 2005 and implemented by January 1, 2006.
- B. Cal-EPA, or its successor, should develop an implementation plan to create a multimedia environmental compliance assurance program. This plan should be developed by July 1, 2005 and implemented by January 1, 2006.
- C. Cal-EPA, or its successor, should develop an enforcement protocol, which standardizes the administrative, civil, and criminal enforcement processes to be used in all environmental programs. The Governor should work with the Legislature to implement the protocol.
- D. Cal-EPA, or its successor, should develop an enforcement appeals process to be used by all environmental programs. The Governor should work with the Legislature to implement the protocol.
- E. Cal-EPA, or its successor, should launch several pilot programs utilizing the Environmental Results Program approach.

Two pilot programs should be launched in the first year after the release of this report and should cover industrial sectors where other states have already developed the core materials.

Two additional pilot programs should be developed and implemented starting in the second year after the release of this report.

All pilot programs should be conducted with a multi-media approach (air, land and water) as well as incorporating pollution prevention. Baseline inspections should be conducted prior to the implementation of any pilot program so that reliable statistics can be compiled during the course of the pilot program to assess rates of compliance. The pilot programs should be implemented primarily by the Certified Unified Program Agencies while state agencies should take the lead in developing the training materials and conducting the actual training sessions.

- F. Cal-EPA, or its successor, should establish contacts with other states utilizing the Environmental Results Program and with the

U.S. Environmental Protection Agency to share information and pool resources for future activities.

Fiscal Impact

Emphasis of this proposal is on better utilization of existing resources that could be redirected from routine inspections to support the increased multi-media compliance assurance directed at regulated businesses. The largest fiscal benefit resulting from these efforts should occur as a result of increased compliance and pollution prevention. Increased compliance should lead to reduced need for lengthy and expensive enforcement actions. Reductions in chemical use obtained through pollution prevention should reduce industry costs.

Improved compliance should reduce the release of chemicals into the environment thus reducing community and employee exposure to harmful chemicals. This should result in improved health, which may be translated into reduced health care cost and avoidance of lost wages.

Reducing the release of harmful chemicals into the environment will also have a general benefit to the environment by improving the quality of our water and air. Chemicals released into the environment can contribute to the production of air pollution that accelerates the destruction of surface materials. An overall improvement in air quality will help to reduce the rate of destruction to the state's infrastructure.

Resolution 25: Streamline and Eliminate Duplicative Reporting for the Environmental Protection and Resources Agencies

Summary

The California Environmental Protection Agency (Cal-EPA) and the Resources Agency are required by law to prepare hundreds of reports on program activities and accomplishments, many of which are duplicative, focus on programs or projects that are obsolete, or are of little or no interest to the Legislature or the public. These reports should be eliminated. Reports that continue to provide important information to the Legislature and the public should be posted on the Internet or published on compact discs, thereby reducing costs associated with a manual, paper-based process and making the information more readily available.

Background

The boards, commissions, departments, and offices of Cal-EPA and the Resources Agency are required by state law to report to the Legislature, Governor's office, and control agencies on program-specific information. Some of this information is already reported by other agencies, is available on the Internet, or is obsolete. Some required reports include programs that are no longer funded, such as the Department of Toxic Substances Control's (DTSC) Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) program. Other reports require information that has become obsolete such as the California Energy Commission's quarterly reporting of the amount of Methyl Tertiary-Butyl Ether (MTBE) in gasoline, even though gasoline sold in California no longer contains MTBE.

Most reports were required to be done at a time when information was not readily available to interested parties on the Internet. Printing hard copies of reports uses large amounts paper and other resources, and the costs can easily run into the thousands of dollars for each report.

Cal-EPA sponsored legislation to amend and repeal specific code sections related to environmental protection, and to require the California Integrated Waste Management Board to complete guidelines for all state agencies on how to best convert reports from paper to electronic format. The bill has passed the Assembly and is currently in the Senate Environmental Quality Committee.

The following table was compiled from information submitted to the California Performance Review by Cal-EPA and Resources Agency staff. The table lists the code section, agency, and savings associated with repealing some legislative and executive reports.

California Environmental Protection Agency Reports to Repeal

Code Section	Entity	Description	Occurrence	Savings GF	Savings SF	Recipient	Personnel Years (PYs)	Notes
FAC 13144	DPR	Pesticide Contamination Prevention Act—Report on status of groundwater protection data gaps and the results for products screened by the specific numerical values.		\$625	\$1,875			

Resolution 34: Improve Collection of Department of Fish and Game Fees for Reviewing Environmental Reports

Summary

The Department of Fish and Game is not receiving up to \$8 million in fees annually for reviewing environmental reports. General Fund resources subsidize these operations. The fee structure is not designed to offset the costs of the review process and many projects are improperly exempted from paying the fees. Minor amendments to the Fish and Game codes will result in greater fee collection with a corresponding reduction in the need for General Fund resources.

Background

One of the Department of Fish and Game (DFG) responsibilities is to protect California's natural resources through the review of Environmental Impact Reports (EIR) for proposed development. Agencies responsible for approving or denying land-use permits (e.g., city councils for building permits) are required to assess environmental impacts under the California Environmental Quality Act and serve as the "lead agency" for preparing environmental reports describing the impacts of land-use projects. The permitting fees paid by project proponents are intended to cover the cost for overseeing the preparation and review of EIRs. One reason for conducting environmental reviews and issuing EIRs is to identify the effects of development and land-use projects on the state's natural resources, including impacts to ecosystems (fish, wildlife, plants and habitat). In reviewing the EIRs, DFG is required to determine whether an environmental report adequately identifies the project impacts and to propose any mitigation measures it deems necessary to reduce or prevent harm to ecosystems.

Fees for environmental review mandated

In 1990, legislation was enacted authorizing the DFG to charge \$850 for a review of an EIR and \$1,250 for a Negative Declaration. Negative Declarations are documents that purport to show that a project has no significant impact on the environment. Revenues generated by the fees would be used, in part, for consulting with other public agencies (e.g., Department of Forestry on timber harvest plans), reviewing environmental documents, recommending mitigation measures and developing monitoring requirements for purposes of the California Environmental Quality Act. The fee can also be used to pay for natural resource restoration projects. The legislation also authorized lead agencies to make an initial determination that a project has de minimus (minimal) impact on the environment and exempt the project from review and the fee. Because DFG makes the final determination on a project's environmental impact, however, it can reverse the lead agency's de minimus

finding and require the project proponent to file the appropriate environmental reports and pay the required fee.

Legal challenges temporarily put fee collection on hold

After one year of operation, the legislation establishing the fees for reviewing EIRs was challenged in court on the basis that it imposed a tax that had failed to receive the required two-thirds approval of the Legislature to be enacted. During the time of the lawsuit, DFG put fee collection activities in a “maintenance mode,” meaning that they continued to review environmental reports but did not aggressively pursue either fee collections or question de minimus determinations. In April 2000, the Court of Appeals ruled that the fee was constitutionally valid—that it was not a tax. The State Supreme Court refused to overrule the Court of Appeals decision in July 2000.

According to DFG, during the first full year of fee collections, about \$8 million in fees was collected. However, during the legal challenge, revenue collection plummeted to no more than half that amount in any give year. And, even after the case was decided in favor of the state, revenue generation continues to drop—to about \$1.8 million annually. DFG receives approximately 6,800 environmental documents annually but collects fees to support evaluating about a third of them.

In April 2002, the Legislative Analyst’s Office issued a critique of DFG’s environmental review and fee collection practices. In its report, the LAO expressed several concerns about the lack of an automated tracking system to record the type and number of environmental documents that DFG received each year. One concern was that the lack of automated systems might cause DFG to fail to review high-priority projects. Another concern was the potential that fee collection was artificially low because local planners were incorrectly labeling projects as de minimus. The LAO also stated that without an audit of local practices, it was impossible to determine if the practice of mislabeling projects as de minimus was widespread.

To address the LAO’s concerns, DFG installed a database in 2002 to track environmental documents and audited environmental reports received in 2001 through 2003 to determine if lead agencies had mislabeled environmental documents as de minimus. Based on the audit, the department estimates that as many as 50 percent of de minimus projects have been inappropriately exempted from the fee. The department is pursuing payment from project proponents whose project was inappropriately designated as de minimus.

General Fund subsidizing environmental reviews

Because DFG is not receiving nearly the amount of fee revenues as originally estimated at the inception of the program, it cannot meet all of its responsibilities given to it under the California Environmental Quality Act. It has also prevented the department from pursuing standardized policies for

mitigation measures for projects to help guide local government and project proponents. Developing standard mitigation measures will help streamline the environmental review process, provide certainty for local planners and project proponents and provide more consistent environmental protection. The department has had to rely on General Fund resources to pay costs that should have been paid by fee collections in the amount of \$27 million over the past several fiscal years.

Fees not based on complexity of the review

Fees are charged based on the type of environmental review document filed, not the complexity of the review or the potential harm caused by the project. This flat fee approach creates a perceived inequity in the fee since all projects, despite their size or the complexity of the review, pay the same fee as long as they receive either a Negative Declaration or functional equivalent designation as provided by the Act. In addition, environmental filing fees from water rights applications are dedicated to paying for stream flow analysis and monitoring aimed at protecting riparian habitat and fish populations are inadequate to fund the stream flow analysis program. As a result, the Department curtailed the stream flow analysis and monitoring program.

Finally, not all state departments that have lead agency responsibilities remit to DFG environmental filing fees. For instance, DFG is not collecting fees from the Department of Pesticide Regulation or the California Energy Commission, and the State Water Resources Control Board (SWRCB) has exempted most projects.

Recommendation

The Governor should work with the Legislature to amend the appropriate sections of the Fish and Game Code to ensure that sufficient revenue is received to administer the provisions of the California Environmental Quality Act.

- The fee structure should consider a project's size, scope and complexity.
- The definition that a project has de minimus impact on the environment should be based solely on a finding of fact that the project is exempt from the provisions of the California Environmental Quality Act.
- Require project proponents to remit fees to the state not a lead agency, or allow lead agencies, other than a state agency, to add a surcharge onto the filing fee as an incentive to collect and remit filing fees to the state. Surcharge money would be placed in a trust account to be used for the implementation of projects to improve wildlife habitat within the local jurisdiction where the project is approved.

Fiscal Impact

The actual cost for environmental review is approximately \$11 million annually. The filing-fee revenue generated \$2 million in Fiscal Year 2003–2004, creating the need for a \$9 million General Fund subsidy. The Department estimates an added incentive for fee collection would generate \$6.25 million savings to the General Fund.

General Fund (dollars in thousands)

Fiscal Year	Savings	Costs	Net Savings (Costs)	Change in PYs
2004–05	\$0	\$0	\$0	0
2005–06	\$0	\$0	\$0	0
2006–07	\$6,250	\$0	\$6,250	0
2007–08	\$6,250	\$0	\$6,250	0
2008–09	\$6,250	\$0	\$6,250	0

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from 2003–04 expenditures, revenues and PYs.